SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 509

A/S *SKAUGAAS* (I. M. SKAUGEN), as Owners of the Norwegian Motor Vessel *SKAUSTRAND*,

Petitioner,

v.

DREDGE *CARTEGENA* and STANDARD DREDGING COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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September 24th, 1965

IN THE

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THE QUESTION PRESENTED FOR REVIEW

The question presented by petitioner (p. 2)* is not stated in terms significantly related to the findings by the courts below since: (1) there is no finding that the dredge *Cartagena* (lawfully fixed and working in the channel) failed to keep a proper lookout or that any deficiency of lookout on her part contributed to the collision,—indeed, the probative evidence indicates that she kept a proper lookout up to the time of collision; (2) as the District Court found, the *Thirtle* and *Skaustrand* sighted each other at least ten

* Unless otherwise specified, all page references herein are to the Petition and Appendices A and B thereto.

minutes before they collided, were in full view of each other, and each was as well or better able than the *Cartagena* to judge the course, speed and intention of the other; and (3) danger of collision did not result from the dredge's presence, but finally arose as a consequence of *Skaustrand's* unforeseeable and grossly negligent navigation, which *Cartagena* did not and, as a matter of law, was not required to anticipate.

Statement of the Case

In stating the case petitioner omits many of the material facts and findings of the District Court, as affirmed by the Court of Appeals.

Under a U. S. Army Corps of Engineers contract the dredge *Cartagena* was lawfully working in Fort McHenry Channel, fixed and spudded one hundred feet west of the channel centerline (pp. 30b, 32b). The U. S. Coast Guard had broadcast several radio Notices to Mariners advising that she was thus working and that the easterly half of the channel should be used by navigation during her operations (pp. 5b-6b).

Both *Skaustrand* and *Thirtle* saw *Cartagena* long before the collision (p. 32b). Moreover, when *Thirtle* sounded the required long whistle blast indicating her intention to pass *Cartagena*, the *Skaustrand* and *Thirtle* were already in clear sight of each other and remained so at all material times thereafter until they collided (pp. 12b-13b, 24b, 30b).

The *Cartagena's* two-blast reply to *Thirtle's* long blast did not direct her to pass or "come-ahead", as petitioner incorrectly implies (pp. 4, 6), but merely directed *Thirtle* to the proper side for passage, as required by regulation. 33 C. F. R. §80.26 (p. 1a). *Thirtle* properly answered *Cartagena's* two-blast signal with two blasts. The *Skaustrand*

failed to hear that exchange, possibly, as the District Court found (p. 19b), because of her failure to maintain a proper lookout forward.

After the two-blast exchange, *Cartagena's* lookout went back to his station astern (Appellant's Appendix, p. App. 76) from where *Skaustrand* was approaching, and her leverman remained at his post forward (p. 6b), so that both *Thirtle* and *Skaustrand* remained under observation. The *Thirtle* commenced swinging to her starboard to pass *Cartagena.* The *Skaustrand* continued up Brewerton Angle, turned into Fort McHenry Channel and steadied on the course for that channel at 1815, then making a speed of about eleven knots. At 1815 she put her engine slow ahead (pp. 9b, 10b).

The *Skaustrand* never gave any signal of her intention to pass the *Cartagena.* Upon seeing *Thirtle* coming around the dredge into the east half of Fort McHenry Channel, *Skaustrand* blew a five-blast danger signal between 1815 and 1816, but did not promptly stop or reverse her engine although she was still making about eleven knots (p. 10b). Instead, her engine was only put dead slow ahead, at 1816.

The *Thirtle* ignored *Skaustrand's* danger signal, and *Skaustrand* repeated it at 1817, *Thirtle* replying with one short blast, indicating her intent to pass *Skaustrand* port to port (p. 11b). Although *Skaustrand* was still making over ten knots, even then she did not go astern on her engine to kill her headway, but merely stopped her engine, at 1817. She finally went half astern some seconds after 1818, then full astern,—collision occurring at 1819, with the heavily-laden *Skaustrand* still making about six knots (p. 11b).

The District Court condemned *Thirtle.* It also condemned *Skaustrand* for numerous gross faults contributing to the collision,—including excessive speed, failure to keep

a proper lookout forward, and failure to change course and reduce speed earlier than she did (pp. 18b-20b).

In response to *Skaustrand's* contentions against *Cartagena,* the District Court held that no authority imposed on the *Cartagena* the impossible burden of estimating the respective courses, speeds and intentions of any two or more vessels approaching from various angles. However, even if the *Cartagena* had such a duty, the District Court found, on the evidence, that the signals given or not given by the *Cartagena* did not and could not have contributed to the collision (pp. 24b-25b).

In affirming, the Court of Appeals pointed out further (1) that *Cartagena* was well warranted in assuming that *Skaustrand* would maintain a safe speed and would make such alteration in its speed as prudence would suggest as she neared *Thirtle,* (2) that *Skaustrand* never indicated an intention to pass *Cartagena* [as required by statutory regulation], and (3) for all *Cartagena* knew, *Skaustrand* could have been planning to stop or turn eastward into another channel (pp. 33b-34b).

Argument

1. This case raises no question warranting review by this Court. It concerns a simple collision which, as the courts below decided on all the evidence, was caused by several negligent acts or omissions on the part of each of the colliding vessels,—amounting to gross negligence,—with *Cartagena* being free from fault. There was no finding that *Cartagena* failed to keep a proper lookout; the evidence indicates that, in fact, she did so. Therefore, contrary to petitioner's repeated assertions, on the facts of this case, the decision below does not relieve a dredge of any duty, established by law, to keep a lookout.

Since, on the findings herein, no genuine question of general importance to maritime safety exists, this case does not warrant review by this Court on petition for certiorari.

2. In concocting its argument (pp. 5-7) petitioner has quoted the Court of Appeals' accurate statement, reached after review of the evidence, that "... there is no showing that the dredge became aware of the danger created by the converging ships in time to warn them of the impending collision" (p. 6) and added to it the wholly unwarranted contention that this was due to the failure of the *Cartagena* to maintain a proper lookout (pp. 6, 7). That contention is not based on any finding of the courts below. The evidence indicates that the *Cartagena* maintained a lookout. The Court of Appeals, which had all the evidence before it, has rejected petitioner's contention outright.

The *Cartagena* was justifiably unaware of the danger to be brought on by *Skaustrand*'s approach until too late to give any warning because, as a matter of law, she had no duty to anticipate negligence, let alone such grossly reckless navigation as *Skaustrand* was to attempt. *Southern Pacific Co.* v. *Haglund*, 277 U. S. 304, 310 (1928); *Great Lakes Dredge & Dock Co.* v. *The Santiago*, (C. A. 2), 155 F. 2d 148, 149-150; *Long Island R. Co. et al.* v. *Killien*, (C. A. 2) 67 Fed. 365, 367-368; *Larsen et al.* v. *Portland California S. S. Co. et al.*, (C. A. 9) 66 F. 2d 326, 330.

As *Skaustrand* approached, *Cartagena* was not even chargeable with knowledge that she intended to pass the dredge since *Skaustrand* never gave the required long-blast signal to indicate such intention. Furthermore, as the Court of Appeals pointed out (p. 34b) *Skaustrand* could have been planning to stop or turn off into a side channel. Certainly *Cartagena* could not have foreseen and was under no duty to anticipate that *Skaustrand*, without

signal, would speed recklessly into the area immediately below the dredge as *Thirtle* was passing.

The principal authorities cited by petitioner either do not stand for the propositions which petitioner asserts or are immaterial or inapplicable to this cause.

The Virginia Ehrman and The Agnese, 97 U. S. 309 (1877) does not hold, as petitioner asserts (p. 7), that an anchored steam dredge must have "'competent lookouts properly stationed on her deck". It merely recites as a fact that the steam dredge in that case had such lookouts (p. 315).

The Clara, 102 U. S. 200 (1880) concerned an anchored vessel that had no one at all on watch on her deck at the time of collision, that failure being the cause of the collision.

The Ariadne, 13 Wall. (80 U. S.) 475 (1871) did not hold a dredge a "vessel" which must exercise proper seamanship, as petitioner (probably inadvertently) asserts (p. 7), but concerned a steamer and a sailing vessel which were both under way,—a factual situation wholly unrelated to the cause at bar.

The applicable law as to lookout is expressed not in *The Ariadne* but in *Southern Pacific Co.* v. *Haglund*, 277 U. S. 304 (1928), *supra*, page 5, a case in many respects remarkably similar to the cause at bar. This Court,—in affirming the exoneration of the *Enterprise*, a stationary vessel blocking three-fourths of a narrow channel, against a charge that she should have sounded a warning to one of two vessels approaching in the channel from opposite directions,—said, at page 310:

> ". . . The rule stated in *The Ariadne*, 13 Wall. 475, 478 as to the responsibility of a moving vessel for the failure of her lookout to discover an approaching vessel in time to avoid a collision, does not apply to a vessel in the position of the *Enterprise*, which

was at rest, without power; and the absence of a lookout upon her did not in any manner contribute to the collision."

That authority would be controlling to exonerate *Cartagena,* even if, *arguendo,* her lookout were open to criticism.

Three times in the courts below petitioner has endeavored to fasten contributory liability on *Cartagena.* Each time the court, with all the evidence before it, has rejected the attempt. This petition represents a fourth attempt to achieve the same end by asserting that a question exists which warrants review by this Court. Such assertion is without substance, resting wholly upon petitioner's attaching a non-existent meaning to the Court of Appeals' opinion, combined with both the unwarranted contention that *Cartagena's* lookout was improper and an erroneous view of the law.

Conclusion

Wherefore, respondents pray that this petition for a writ of certiorari be denied.

Respectfully submitted,

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September 24th, 1965